



**Tribunals Service**  
Information Tribunal

**Information Tribunal Appeal Number: EA/2007/0137**

**Information Commissioner's Ref: FER0086108**

**Heard at Tax and Land Tribunal**

**Decision Promulgated**

**On 2 and 3 June 2008**

**14 July 2008**

**BEFORE**

**Chairman**

**ROBIN CALLENDER SMITH**

**and**

**DR HENRY FITZHUGH**

**DAVID SIVERS**

**Between**

**JAMES STEWART**

**Appellant**

**and**

**INFORMATION COMMISSIONER**

**Respondent**

**and**

**DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

**Additional Party**

**Representation:**

For the Appellant: Mr M Joseph (assisting Mr James Stewart)

For the Respondent: Ms Anya Proops (Counsel instructed by the Information Commissioner)

For the Additional Party: Mr Gerry Facenna (Counsel instructed by the Department for the Environment, Food and Rural Affairs)

## Decision

The Tribunal upholds the decision notice dated 19 November 2007 in the following terms:

1.If the Tribunal had considered only the Information Commissioner's decision of 19 November 2007 in respect of Regulation 12 (4) (e) of the Environmental Information Regulations 2004 (EIR) then – taking into account the Commissioner's altered position on this point as a result of hearing oral evidence from DEFRA in open and closed sessions – the Tribunal's unanimous decision would have been to require DEFRA to redact information in its closed Forensic Accountant's report at the heart of the appeal. This would have required confidential information (referred to in the hearing as "assumptions" information) to be redacted but would have required disclosure of the remainder of the information.

2. The Tribunal, however, had to consider two other areas specifically relied on by the Additional Party. Those were DEFRA's reliance on Regulation 12 (5) (b), where disclosure would adversely affect the course of justice because the report was covered by legal professional privilege and – in addition – Regulation 12 (5) (e) where disclosure would adversely affect the confidentiality of commercial information where such confidentiality is provided by law to protect a legitimate interest.

3. On each of these areas the Tribunal decided unanimously that the public interest in maintaining these exceptions outweighed the public interest in disclosing the information (Regulation 12 (1) (b)).

4. As a consequence the Tribunal does not require DEFRA to take any action.

## **Reasons for Decision**

### **Introduction**

1. In 2001 the Government was obliged to respond to an outbreak of Foot and Mouth Disease (FMD) in the United Kingdom. The Response was co-ordinated by a Ministry now called the Department for the Environment, Food and Rural Affairs (DEFRA).
2. DEFRA used, among others, two contractors for the clean-up operations: Greyhound Plant Services (Greyhound) and JT Landscape Designs of Blackwood (JT). DEFRA became involved with legal disputes in respect of the charges by these companies in respect of services they had rendered.
3. Mr Stewart – a television journalist - had made a television programme for HTV that examined in particular the work done by DEFRA contractors (including Greyhound and JT) in Wales and at the Eppynt site.
4. In February/March 2005 he submitted a number of requests for information to DEFRA in relation to its dealings with Greyhound and JT. The requests were aimed at information relating to any investigations which DEFRA had carried out into the conduct of these two companies and the sums which DEFRA had spent on these companies. On 18 March DEFRA provided details of the overall sums paid to Greyhound (£23,160,276.54) and JT Landscapes (£2,258,827.81) and, on 21 March, Mr Stewart requested a breakdown of those payments and any relevant briefings or reports about them.
5. DEFRA confirmed in a letter dated 7 July 2005 that his requests covered a significant volume of documentation which would entail an unwarranted diversion of resources to respond to. It confirmed that it did hold a particular forensic accounting report dated 18 July 2003

which related to dealings with Greyhound. The report had been prepared on DEFRA's behalf to assist DEFRA:

- (i) In deciding whether invoices submitted by Greyhound represented valid charges for work it had requested; and
- (ii) In obtaining legal advice on its position vis-à-vis claims being brought against DEFRA by Greyhound.

6. DEFRA went on to confirm that it was not prepared to disclose the forensic accounting report because:

- (i) It was a document which fell within the ambit paragraphs 12(4)(e) (internal communications), 12(5)(b) (confidentiality of proceedings of a public authority) and 12(5)(e) (confidentiality of commercial information) EIR; and
- (ii) On an application of the public interest test, the public interest weighed in favour of nondisclosure;
- (iii) The public interest weighed in favour of nondisclosure because:
  - (a) Disclosure of the report could damage Greyhound's commercial interests; damage the interests of third-party companies (because the report contained information relating to Greyhound's subcontractors and third-party labour and plant suppliers); and, further, prejudice DEFRA's position in commercial negotiations with other companies in future; and
  - (b) Whilst the public had an interest in ensuring that public authorities were held accountable for the sums they had expended, that interest was outweighed by the public interest in withholding this particular information.

7. On 4 August 2005 Mr Stewart submitted a complaint to the Information Commissioner about DEFRA's handling of his requests. DEFRA

provided the Information Commissioner with a copy of the forensic accounting report dated 18 July 2003.

8. On 19 November 2007 the Information Commissioner concluded that:

- (i) The report fell within the ambit of Regulation 12(4) (e) EIR;
- (ii) The public interest weighed in favour of the report being withheld in all the circumstances; and
- (iii) Accordingly, DEFRA had been entitled to withhold the information under regulation 5(1) EIR.

#### Summary of the Information Commissioner's Decision

9. The regulation 12(4) (e) provides that an authority may refuse to disclose information to the extent that "*the request involves the disclosure of internal communications*". The report was an internal communication and accordingly regulation 12(4) (e) was engaged

10. The public interest arguments in favour of releasing the report include:

- (i) Improving transparency of decision-making processes within public authorities; and
- (ii) Promoting accountability and transparency in the disbursement of substantial public funds.

11. The public interest factors in favour of withholding the report identified by DEFRA include:

- (i) Disclosure would prejudice the Government's ability to enter into confidential settlements in the context of future litigation because parties involved in settlement negotiations would not feel confident that any information they provided as part of the negotiations would be kept confidential;

- (ii) The specialist advice contained within the report addressed possible counter-arguments for the purposes of the litigation and disclosure of this advice could accordingly affect DEFRA's negotiating position in the context of future commercial litigation (i.e. by revealing weaknesses which might be exploited by other parties);
- (iii) Examination and investigation of the accounts involved forensic techniques which were not in the public domain and which it would not be in the public interest to disclose if taxpayers were to be protected in future; and
- (iv) Providing a detailed insight into how the Department's forensic accountancy advisers assessed the validity of claims made against DEFRA could assist persons in seeking to defraud the Department.

12. Having regard to all those public interest considerations, the Information Commissioner concluded that the public interest in withholding the report outweighed the interest in disclosing it. The fact that disclosing the report could assist third parties in defrauding the Department was particularly important in terms of tipping the public interest balance in favour of non-disclosure.

13. Redacting the report so as to remove information about the accounting procedures would not assist. This was because stripping out the information about the accounting procedures would render the remaining information virtually meaningless and of little value. As a result DEFRA was entitled to withhold the report pursuant to Regulation 5(1) of the Environmental Information Regulations.

#### Summary of Mr James Stewart's Grounds of Appeal

14. Mr Stewart, in his appeal notice dated 16 December 2007, took issue with the Information Commissioner's conclusion in respect of the

application of the public interest test. He pointed out that, with very few exceptions, the courts of the United Kingdom were open to the public and the press. Fraud cases were not an exception. In such cases, the jury, the public and the press regularly heard prosecution evidence which laid bare in great detail the nature of the alleged fraud, the modus operandi of the alleged fraudster and the investigative methods of the police and their forensic accountants.

15. Forensic accountants were called to give evidence in person and were cross examined in relation to their investigations. Juries were required to make judgements about the reliability of the forensic accountancy procedures employed. The fact that potential fraudsters might benefit from hearing or reading the evidence was not a ground for excluding the press and the public from such trials.
16. If there was no suspicion of fraud in relation to Greyhound (as the lack of any prosecution suggested), there was less reason for concealing the details of disputed claims for payment than in the criminal courts. If the forensic accountant's report showed that DEFRA failed to investigate the allegations made in HTV's broadcast then the public were entitled to know that.
17. A number of legal actions had been brought against DEFRA by contractors involved in the Foot and Mouth crisis as a result of the Government's failure to pay their invoices in full. These cases had been reported in full and contained a large amount of detailed information about the processing and evaluation of contractors claims. Specifically cited were **JDM Accord v DEFRA (TCC) (2004) CILL 2067** and **Ruttle Plant Hire v DEFRA [2004] EWHC 2152**.
18. The Commissioner should have decided in favour of release of the information in the forensic accountant's report.

## Summary of the reply by DEFRA, the Additional Party

19. DEFRA was joined as an Additional Party on 1 February 2008. It adopted the Information Commissioner's reasons for the decision about non-disclosure of the forensic accountant's report.
20. In particular, the report was produced to provide DEFRA with an expert forensic accounting assessment of invoices submitted by Greyhound, including an opinion as to the validity of the invoices and any supporting evidence. It had also been produced to obtain legal advice regarding DEFRA's position in relation to Greyhound.
21. In the context of the 2001 Foot and Mouth outbreak, the use of internal forensic accountancy expertise – and the resulting ability of DEFRA to reach confidential financial settlements with contractors – was estimated to have saved tens of millions of pounds of public money. The forensic accountancy techniques used by DEFRA, which provided the basis upon which DEFRA obtained legal advice as to its position in relation to the claims, were not in the public domain.
22. In relation to points made by Mr Stewart in his notice of appeal, the use of police forensic accountancy evidence in criminal trials was not the same as the disclosure of an accountancy report produced for internal purposes to enable the public body to obtain legal advice. In criminal trials the public interest lay heavily in favour of a defendant's right to a fair trial and specifically the right to challenge evidence relied on by the prosecuting authority to establish guilt. That right generally outweighed any harm that might be caused by disclosure of particular investigative techniques used by the police. In contrast the present appeal was concerned with the purely internal use of forensic accountancy expertise by a public body in connection with a commercial dispute and for the purposes of enabling that body to establish its own legal position with a view to protecting the public finances from invalid claims. The fact that police investigative



techniques could be disclosed in fraud trials was not an appropriate comparison or analogy.

23. DEFRA took the view that the report was not only protected by Regulation 12(4) (e) EIR but also by Regulation 12 (5) EIR. The forensic accountancy report was specifically produced for the purposes of obtaining legal advice in relation to anticipated legal action and was therefore covered by litigation privilege. It also contained confidential and commercially sensitive material relating to Greyhound's charging structure and relationship with subcontractors and third parties, and disclosure would harm the legitimate economic interests of Greyhound and those third parties. DEFRA submitted that should it be necessary to go further than 12(4) (e) then the exceptions at regulation 12 (5) (b), 12 (5) (d) and 12 (5) (e) were also engaged. The public interest test in regulation 12 (1) (b) EIR required the public interest be assessed in all the circumstances of the case. In this case that included the strong public interest in protecting legal professional privilege and the public interest in protecting the commercial interests of third parties.

### Statutory Provisions

24. The relevant statutory framework is set out in the Environmental Information Regulations 2004 (EIR) which came into force on 1 January 2005.

25. "Environmental information" is defined in Regulation 2 (1) EIR as follows:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste,

including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

26. Regulation 5 (1) EIR imposes a general obligation on public authorities to make available to members of the public environmental information which they hold on request. However, the general duty to disclose is subject to a number of exceptions provided for in Part 3 EIR.

5. - (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests,

the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

27. The relevant exceptions in this appeal are provided for in Regulation 12 EIR, set out below:

**12.** - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person -
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

### Preliminary Issues

28. At the beginning of the hearing the Appellant, who was assisted in the preparation and presentation of his case by Mr Mike Joseph, sought to extend the scope of the appeal beyond the issue of the Forensic Accountant's Report.
29. The Appellant's argument was that DEFRA had chosen this document from among many that it held and had then claimed legal privilege in respect of it. By choosing such a document DEFRA would have known that the public interest test was never likely to be weighed in favour of release but – because the Appellant was not a lawyer – his consent to the focus of his enquiries being placed on this document unfairly limited the selection of documents that may have been relevant.
30. On that basis, the Appellant argued, the appeal hearing should not be restricted to the non-disclosure of the Forensic Accountant's report.

31. This application was opposed by Ms Proops, Counsel for the Information Commissioner and Mr Facenna, Counsel for DEFRA, on the basis that such a widening of the ambit of the appeal at such a late stage was unfair and would – in effect – put the Tribunal in the position of “leapfrogging” decisions that might need to be considered later as separate issues by the Information Commissioner.
32. The Tribunal retired briefly to consider the application and determined that the appeal would continue on the limited grounds before it and not as requested by the Appellant. It was open to the Appellant to make further information requests on other related issues. The Tribunal noted that any such further requests should not be considered as vexatious either by DEFRA or the Information Commissioner.
33. Counsel for the Information Commissioner then indicated that the Commissioner’s position was opened minded and would be considered further during the hearing following both the open and the closed evidence from Mr David Rabey, Director of Purchasing and Supply at DEFRA since 1993, and a DEFRA officer since 1991

#### Summary of Appellant’ Evidence

34. Mr Stewart explained that he was a freelance journalist and producer of radio and television programmes. In 2001 he was employed as a producer in the Current Affairs department of ITV Wales (then known as HTV Wales). His evidence opened with the playing of a DVD recording of an HTV programme broadcast on 18 October 2001 in the series *Wales this Week*. This programme outlined allegations about the way Greyhound and other contractors had behaved during the time they were contracted by the Government on work connected with the Foot and Mouth outbreak.

35. The programme commentary focused on the “scandal of taxpayers’ money going up in smoke”. The programme had eyewitness accounts in relation to negligent and deliberate environmental pollution in relation to attempt to defraud DEFRA. Mr Stewart made the point that neither Greyhound nor others identified in the programme had contested these allegations, which had been put to them specifically by HTV.
36. Prior to the programme being transmitted on 15 October 2001 the programme’s allegations were put to DEFRA. Mr Stewart said that the only one that was answered by the time the programme was broadcast was whether DEFRA would be investigating the allegations. DEFRA had said the specific instances that had been put to it would be investigated but that it would not be appropriate to discuss them further before the investigations were completed. This was reported within the broadcast programme.
37. Mr Stewart said that 6 ½ years later DEFRA had still released no information following these investigations. There had been repeated requests, negotiations, internal reviews and referral to the Information Commissioner to which DEFRA had resolutely refused to respond, despite this being a matter of serious public interest raised by a public service broadcaster.
38. In Mr Stewart’s view DEFRA’s approach, with the arrival of Freedom of Information legislation, was a defensive strategy designed to restrict and thwart the process of openness wherever possible.
39. A copy of that broadcast programme had been provided to Dr Iain Anderson, Chairman of the Lessons Learned Inquiry (FMD) and Mr Stewart had written directly (23 July 2002) to Alun Michael MP who

was at the time Minister of State for DEFRA. Neither course of action was significantly productive.

40. When the Environmental Information Regulations became law in January 2005 Mr Stewart had received no information from DEFRA. He lodged requests under the legislation with DEFRA which became the subject of protracted correspondence. By 21 March 2005 he was asking for reports or briefing papers prepared by or for DEFRA “which contain information on the environmental aftermath of the Eppynt disposal operation in general and the actions of Greyhound in particular.”
41. Mr Stewart felt that not only the content but the timing of that new request appeared to have been embarrassing for DEFRA. During the winter 2004/2005 DEFRA and Greyhound were attempting mediation to settle differences over the company’s invoices. These differences were only resolved when DEFRA and Greyhound agreed a final financial settlement on 16 March 2005.
42. He had attempted to assist DEFRA by narrowing the scope of his request but had still failed to get the release of documents. He was unimpressed with DEFRA’s argument that there was “some mystery about the work of its forensic accountants which must be protected from prying eyes and which would be at risk if this report were released..... The work of forensic accountants and other financial investigators is regularly laid bare in the criminal courts where cases are prosecuted.”
43. Mr Paddy French, a Producer in the Current Affairs Department of ITV Wales based in Cardiff, gave evidence in support of the Appellant. He had worked with Mr Stewart in the preparation of the October 2001 HTV programme.

44. He referred in some detail to the judgement in **Ruttle Plant Hire Ltd and Secretary of State for the Environment, Food and Rural Affairs [2004] EWHC 2152 (TCC)**.

45. He believed that the kind of work undertaken by DEFRA's forensic accountants was quite elementary in terms of checking invoices against every other straightforward piece of information. "It was basic audit work that even an ordinary firm of accountants could entrust to a recently qualified member of staff," he said.

46. In particular he stated, with reference to the **Ruttle** case: "... we are given a very full insight into a wide range of detailed methods used by the forensic accountant and quantity surveyors working with him. They were addressing questions which must have been very similar (if not identical) in the examination of Greyhound's account."

#### Summary of Additional Party's (DEFRA's) evidence

47. Mr David Rabey, DEFRA's Director of Purchasing and Supply for the last 15 years, gave both open and closed evidence to the Tribunal. In addition the Tribunal considered closed documentary evidence in relation to the Forensic Accountant's report.

48. In his open evidence he said that £105.8 million of savings could be attributed – in contractual disputes - to the use of forensic accountants by DEFRA in respect of Foot and Mouth issues. That excluded the costs of cleansing and disinfecting disputes. There had been a £650 million saving to DEFRA during a week-long moratorium. During 2005 (the time of the Information request at the heart of this appeal) DEFRA was engaged in approximately 30 disputes relating to Foot and Mouth invoices with a value in the region of £100 million.



49. The forensic accountancy report disclosed to the Tribunal had been commissioned specifically in contemplation of legal proceedings. Comparisons with the **Ruttle** case were not sustainable for reasons elaborated on and explored by the Tribunal in closed session.

### Findings

50. Firstly there is the Issue of the effect of Regulation 12 (4) (e) – the Forensic Accountant’s report as an “internal communication” - on which the Information Commissioner altered his position during the course of the appeal. The effect of this change – after hearing the evidence in closed session - was to concede that it would be possible to redact portions of the Forensic Accountant’s report. There were paragraphs in that report which contained accounting assumptions which, if disclosed, would be likely to assist potential fraudsters.

51. The “assumptions” information was distinct from the remaining information in the report which would not give fraudsters any particular help and, by demonstrating the thoroughness of DEFRA’s forensic accounting regime, might actually help deter them in the future.

52. The Tribunal would have decided that point for exactly those reasons had the Commissioner’s concession not been made.

53. In respect of Regulation 12 (5) (b) – legal professional privilege - the Tribunal finds on the open and closed evidence before it that the Forensic Account’s report was specifically produced for the purpose of obtaining legal advice in relation to anticipated legal action and is therefore covered by litigation privilege. That was the whole thrust of Mr Rabey’s evidence, both oral and written.

54. The Tribunal, in previous decisions including **Bellamy v Information Commissioner & DTI (EA/2005/0023)**, **Adlam v Information Commissioner (EA/2006/0079)**, **Pugh v Information Commissioner (EA/2007/0055)**, **Merseyside Tunnel Users Association (EA/2007/0052)** and **FCO v Information Commissioner (EA/2007/0092)**, has determined that there is a strong public interest in protecting the confidentiality of information covered by legal professional privilege.
55. The Tribunal finds that strong public interest exists in this case recognising that DEFRA should be able to consult its lawyers and experts knowing that documents and reports prepared in contemplation of specific litigation and for the purpose of obtaining advice on, and conducting, that litigation will not be published except where there is an overriding public interest consideration at stake.
56. At the time of the Appellant's request the Forensic Accountant's report was directly relevant to ongoing settlement discussions. In February 2005 there had been no final settlement agreement with Greyhound. At that time DEFRA was engaged in approximately 30 disputes relating to Foot and Mouth Disease invoices and those claims had a value of around £100 million. It would have seriously damaged DEFRA's position if report similar to the Greyhound Report had been published.
57. In terms of Regulation 12 (5) (e) – which protects commercial information legitimate economic interests – the Tribunal finds that disclosure of the Forensic Accountants report would adversely affect DEFRA's legitimate economic interests and would involve disclosure of commercially confidential information that would harm the interests

of Greyhound as well as third parties with whom they trade. It follows that this exception is properly engaged.

58. Disclosure of the Forensic Accountant's Report could dissuade commercial undertakings from assisting in future agricultural crises for fear that similar information about them could be obtained and disclosed in the context of any dispute about payment. Greyhound is still operating and disclosure of the report in 2005 would have damaged its reputation and assisted its competitors. The company had not been consulted about the potential disclosure of the Report and the Tribunal has carefully weighed up – and concluded as it has - the importance of protecting the interests of a company that is not party to these proceedings and its expectation that its co-operation in relation to the production of the Forensic Accountant's Report would not be used to damage its interests in the future.

59. The Appellant argued that information requests relating to information on "emissions engaged Regulation 12 (9) EIR. The Tribunal does not accept this because the information request was not concerned with obtaining information focused on "emissions". The request related to the disbursement to public funds.

60. As a closing comment, it may well be that DEFRA decides to produce a suitably edited version of this Forensic Accountant's Report – or something modelled on it – that demonstrates the quality and depth of the Department's work in validating invoices, costs and expenses in such complex contractual situations. That, however, is a matter for DEFRA.

### Conclusion

61. The appeal fails for the reasons detailed above.

62. Our decision is unanimous.

63. There is no order as to costs.

Signed

Robin Callender Smith

Deputy Chairman

Date 14 July 2008